

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE APRIL 4, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 955

**Introduced by Senator Beall
(Coauthor: Senator Hancock)**

February 4, 2016

An act to amend ~~Sections 1026 and 2968 of~~ *Section 1026 of*, and to *add Sections 1370.015 and 2977 to*, the Penal Code, and to add Section 4146 to the Welfare and Institutions Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 955, as amended, Beall. State hospital commitment: compassionate release.

Existing law requires, when a defendant pleads not guilty by reason of insanity, that a jury determine whether the defendant was sane or insane at the time the offense was committed. Under existing law, if a defendant is found to be not guilty by reason of insanity, the court is required to commit the person to a state hospital, public or private treatment facility, or place him or her on outpatient status, as specified. ~~Existing law requires the Director of State Hospitals to notify the Board of Parole Hearings, and requires the State Department of State Hospitals to discontinue treating a parolee, if the prisoner's severe mental disorder is put into remission during the parole period, and can be kept in remission.~~ Existing law, subject to exceptions, authorizes the release of a prisoner from state prison if the court finds that the prisoner is terminally ill with an incurable condition caused by an illness or disease

that would produce death within 6 months, as determined by a physician employed by the department, and that conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

This bill would establish similar compassionate release provisions for a defendant who has been committed to a state hospital because, among other reasons, the defendant is incompetent to stand trial or has a severe mental disorder. ~~The bill would require the Director of State Hospitals to notify the Board of Parole Hearings, and would require the State Department of State Hospitals to discontinue treating a parolee, if the patient meets the criteria established by the bill for release from the state hospital.~~ The bill would make additional conforming changes and would authorize the director to adopt emergency regulations to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1026 of the Penal Code is amended to
2 read:
3 1026. (a) When a defendant pleads not guilty by reason of
4 insanity, and also joins with it another plea or pleas, the defendant
5 shall first be tried as if only the other plea or pleas had been
6 entered, and in that trial the defendant shall be conclusively
7 presumed to have been sane at the time the offense is alleged to
8 have been committed. If the jury finds the defendant guilty, or if
9 the defendant pleads only not guilty by reason of insanity, then
10 the question whether the defendant was sane or insane at the time
11 the offense was committed shall be promptly tried, either before
12 the same jury or before a new jury in the discretion of the court.
13 In that trial, the jury shall return a verdict either that the defendant
14 was sane at the time the offense was committed or was insane at
15 the time the offense was committed. If the verdict or finding is
16 that the defendant was sane at the time the offense was committed,
17 the court shall sentence the defendant as provided by law. If the
18 verdict or finding is that the defendant was insane at the time the
19 offense was committed, the court, unless it appears to the court
20 that the sanity of the defendant has been recovered fully, shall
21 direct that the defendant be committed to the State Department of

1 State Hospitals for the care and treatment of the mentally
2 disordered or any other appropriate public or private treatment
3 facility approved by the community program director, or the court
4 may order the defendant placed on outpatient status pursuant to
5 Title 15 (commencing with Section 1600) of Part 2.

6 (b) Prior to making the order directing that the defendant be
7 committed to the State Department of State Hospitals or other
8 treatment facility or placed on outpatient status, the court shall
9 order the community program director or a designee to evaluate
10 the defendant and to submit to the court within 15 judicial days of
11 the order a written recommendation as to whether the defendant
12 should be placed on outpatient status or committed to the State
13 Department of State Hospitals or other treatment facility. A person
14 shall not be admitted to a state hospital or other treatment facility
15 or placed on outpatient status under this section without having
16 been evaluated by the community program director or a designee.
17 If, however, it appears to the court that the sanity of the defendant
18 has been recovered fully, the defendant shall be remanded to the
19 custody of the sheriff until the issue of sanity has been finally
20 determined in the manner prescribed by law. A defendant
21 committed to a state hospital or other treatment facility or placed
22 on outpatient status pursuant to Title 15 (commencing with Section
23 1600) of Part 2 shall not be released from confinement, parole, or
24 outpatient status unless and until the court that committed the
25 person, after notice and hearing, finds and determines that the
26 person's sanity has been restored, or meets the criteria for release
27 pursuant to Section 4146 of the Welfare and Institutions Code.
28 Nothing in this section prevents the transfer of the patient from
29 one state hospital to any other state hospital by proper authority.
30 Nothing in this section prevents the transfer of the patient to a
31 hospital in another state in the manner provided in Section 4119
32 of the Welfare and Institutions Code.

33 (c) If the defendant is committed or transferred to the State
34 Department of State Hospitals pursuant to this section, the court
35 may, upon receiving the written recommendation of the medical
36 director of the state hospital and the community program director
37 that the defendant be transferred to a public or private treatment
38 facility approved by the community program director, order the
39 defendant transferred to that facility. If the defendant is committed
40 or transferred to a public or private treatment facility approved by

1 the community program director, the court may, upon receiving
2 the written recommendation of the community program director,
3 order the defendant transferred to the State Department of State
4 Hospitals or to another public or private treatment facility approved
5 by the community program director. If either the defendant or the
6 prosecuting attorney chooses to contest either kind of order of
7 transfer, a petition may be filed in the court requesting a hearing,
8 which shall be held if the court determines that sufficient grounds
9 exist. At that hearing, the prosecuting attorney or the defendant
10 may present evidence bearing on the order of transfer. The court
11 shall use the same procedures and standards of proof as used in
12 conducting probation revocation hearings pursuant to Section
13 1203.2.

14 (d) Prior to making an order for transfer under this section, the
15 court shall notify the defendant, the attorney of record for the
16 defendant, the prosecuting attorney, and the community program
17 director or a designee.

18 (e) When the court, after considering the placement
19 recommendation of the community program director required in
20 subdivision (b), orders that the defendant be committed to the State
21 Department of State Hospitals or other public or private treatment
22 facility, the court shall provide copies of the following documents
23 prior to the admission of the defendant to the State Department of
24 State Hospitals or other treatment facility where the defendant is
25 to be committed:

26 (1) The commitment order, including a specification of the
27 charges.

28 (2) A computation or statement setting forth the maximum term
29 of commitment in accordance with Section 1026.5.

30 (3) A computation or statement setting forth the amount of credit
31 for time served, if any, to be deducted from the maximum term of
32 commitment.

33 (4) State summary criminal history information.

34 (5) Any arrest reports prepared by the police department or other
35 law enforcement agency.

36 (6) Any court-ordered psychiatric examination or evaluation
37 reports.

38 (7) The community program director's placement
39 recommendation report.

40 (8) Any medical records.

(f) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall, at six-month intervals, submit a report in writing to the court and the community program director of the county of commitment, or a designee, setting forth the status and progress of the defendant. The court shall transmit copies of these reports to the prosecutor and defense counsel.

(g) For purposes of this section and Sections 1026.1 to 1026.6, inclusive, “community program director” means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

~~SEC. 2. Section 2968 of the Penal Code is amended to read:~~

~~2968. If the prisoner’s severe mental disorder is put into remission during the parole period, and can be kept in remission, or if the prisoner meets the criteria for release pursuant to Section 4146 of the Welfare and Institutions Code, the Director of State Hospitals shall notify the Board of Parole Hearings and the State Department of State Hospitals shall discontinue treating the parolee.~~

SEC. 2. Section 1370.015 is added to the Penal Code, to read:

1370.015. A person in the care of the State Department of State Hospitals because he or she is incompetent to stand trial may be eligible for compassionate release pursuant to Section 4146 of the Welfare and Institutions Code. In any case in which the criteria for compassionate release apply, the State Department of State Hospitals shall follow the procedures and standards in Section 4146 of the Welfare and Institutions Code to determine if the department should recommend to the court that the person’s commitment for treatment and the underlying criminal charges be dismissed for compassionate release.

SEC. 3. Section 2977 is added to the Penal Code, to read:

2977. A person in the care of the State Department of State Hospitals because he or she is a mentally disordered offender may be eligible for compassionate release pursuant to Section 4146 of the Welfare and Institutions Code. In any case in which the criteria for compassionate release apply, the State Department of State Hospitals shall follow the procedures and standards in Section 4146 of the Welfare and Institutions Code to determine if the department should recommend to the court that the person’s

1 *commitment be dismissed for compassionate release. This section*
2 *shall apply to persons committed for treatment during parole and*
3 *in any commitment made pursuant to Section 2970. If the person*
4 *for whom compassionate release is recommended is on parole,*
5 *notice shall be given to the Board of Parole Hearings.*

6 ~~SEC. 3.~~

7 SEC. 4. Section 4146 is added to the Welfare and Institutions
8 Code, to read:

9 4146. (a) (1) ~~A—This section shall apply in cases where a~~
10 *patient has been committed to the department as a mentally*
11 *disordered offender, because he or she was found not guilty by*
12 *reason of insanity, or because he or she was found incompetent*
13 *to stand trial or be adjudicated to punishment.*

14 (b) (1) A physician employed by the department who determines
15 that a patient meets the criteria set forth in subparagraph (A) or
16 (C) of paragraph (5) shall notify the medical director and the patient
17 advocate of the prognosis. If the medical director concurs with the
18 diagnosis, he or she shall immediately notify the Director of State
19 Hospitals. Within 72 hours of receiving notification, the director
20 or the director's designee shall notify the patient of the discharge
21 procedures under this section and obtain the patient's consent for
22 discharge. The director or director's designee shall arrange for the
23 patient to designate a family member or other outside agent to be
24 notified as to the patient's medical condition, prognosis, and release
25 procedures under this section. If the patient is unable to designate
26 a family member or other outside agent, the director or the
27 director's designee shall contact any emergency contact listed, or
28 the patient advocate if no contact is listed.

29 (2) The director or the director's designee shall provide the
30 patient and his or her family member, agent, emergency contact,
31 or patient advocate with updated information throughout the release
32 process with regard to the patient's medical condition and the
33 status of the patient's release proceedings, including the discharge
34 plan. A patient shall not be released unless the discharge plan
35 verifies placement for the patient upon release.

36 (3) The patient or his or her family member or designee may
37 contact the medical director or director at the state hospital where
38 the patient is located or the Director of State Hospitals to request
39 consideration for a recommendation from the director to the court

1 that the patient's commitment be dismissed for compassionate
2 release and the patient released from the department facility.

3 (4) Upon receipt of a notification or request pursuant to
4 paragraph (1) or (3), respectively, the Director of State Hospitals
5 may recommend to the court that the patient's commitment be
6 dismissed for compassionate release and the patient released from
7 the department facility.

8 (5) The court shall have the discretion to dismiss the
9 commitment for compassionate release and release the patient if
10 the court finds that the facts described in subparagraphs (A) and
11 (B) or subparagraphs (B) and (C) exist:

12 (A) The patient is terminally ill with an incurable condition
13 caused by an illness or disease that would likely produce death
14 within six months, as determined by a physician employed by the
15 department.

16 (B) The conditions under which the patient would be released
17 or receive treatment do not pose a threat to public safety.

18 (C) The patient is permanently medically incapacitated and
19 requires 24-hour total care, and the medical director responsible
20 for the patient's care and the Director of State Hospitals both certify
21 that the patient is incapable of receiving mental health treatment.

22 ~~(b)~~

23 (c) Within 10 days of receipt of a recommendation for release
24 by the director, the court shall hold a noticed hearing to consider
25 whether the patient's commitment should be dismissed and the
26 patient released.

27 ~~(e)~~

28 (d) A recommendation for dismissal submitted to the court shall
29 include at least one medical evaluation, a discharge plan, a
30 postrelease plan for the relocation and treatment of the patient,
31 and the physician's and medical director's determination that the
32 patient meets the criteria set forth in subparagraph (A) or (C) of
33 paragraph (5) of subdivision ~~(a)~~: (b). The court shall order the
34 medical director to send copies of all medical records reviewed in
35 developing the recommendation to ~~both~~ all of the following parties:

36 (1) The district attorney of the county from which the patient
37 was committed.

38 (2) *In the case of a mentally disordered offender on parole, the*
39 *district attorney of the county from which the patient was*
40 *committed to the state prison.*

1 ~~(2)~~

2 (3) The public defender of the county from which the patient
3 was committed, or the patient's private attorney, if one is available.

4 (4) *In the case of a mentally disordered offender on parole, the*
5 *public defender of the county from which the patient was committed*
6 *to the state prison, if one is available, or the patient's private*
7 *attorney, if applicable.*

8 (5) *If the patient is a mentally disordered offender on parole,*
9 *the Board of Parole Hearings.*

10 (6) *If the patient is on mandatory supervision or postrelease*
11 *community supervision and has been found incompetent to be*
12 *adjudged to punishment, the county entity designated to supervise*
13 *him or her.*

14 ~~(d)~~

15 (e) (1) The matter shall be heard before the same court that
16 originally committed the patient, if possible.

17 (2) *If the patient is a mentally disordered offender on parole*
18 *and was committed for treatment by the Board of Parole Hearings,*
19 *the matter shall be heard by the court that committed the patient*
20 *to the state prison for the underlying conviction, if possible.*

21 ~~(e)~~

22 (f) If the court approves the recommendation for dismissal and
23 release, the patient's commitment shall be dismissed and the patient
24 shall be released by the department within 72 hours of receipt of
25 the court's order, unless a longer time period is requested by the
26 director and approved by the court.

27 ~~(f)~~

28 (g) The director or his or her designee shall ensure that upon
29 release, the patient has each of the following in his or her
30 possession, or the possession of the patient's representative:

31 (1) A discharge plan.

32 (2) A discharge medical summary.

33 (3) Medical records.

34 (4) Identification.

35 (5) All necessary medications.

36 (6) Any property belonging to the patient.

37 ~~(g)~~

38 (h) After discharge, any additional records shall be sent to the
39 patient's forwarding address.

40 ~~(h)~~

1 *(i)* The director may adopt regulations to implement this section.
2 The adoption of regulations for the implementation of this section
3 by the department is exempt from the Administrative Procedure
4 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of
5 Division 3 of Title 2 of the Government Code).

6 ~~*(i)*~~

7 *(j)* Nothing in this section shall preclude a patient who is
8 released pursuant to this section from being committed to a state
9 hospital under the same commitment or another commitment.

O